

PATENT APPLICATION
Attorney Docket No. 040049

Amendments to the Figures

Kindly replace Figures 22 and 24 with the replacement figures attached as Appendix A.

A line has been added to indicate the Not I-Pme I fragment of pFC3-KDBHL was ligated with pDElia2_{FC5}. This amendment is support in the specification on 65, lines 15-17. The notation "(I)" has been deleted from Figure 24. The extraneous nature of the "(I)" would be recognized by one skilled in the art upon review of the specification.

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Remarks

I. Status

Applicants thank the Examiner for acknowledgement of the change of inventorship and the claim to priority. Applicants also thank the Examiner for the acknowledgement of Applicants' election and consideration of the IDS.

Following entry of the amendments included herein, claims 19, 20, 22, and 23 are pending, with claims 1-18, 21, and 24-32 cancelled and claims 19, 22, and 23 amended herein. Support for the amendment to claim 19 is found at least on page 4, lines 22-23. Support for the amendment to claim 20 is found at least on page 4, line 21. Support for the amendment to claim 23 is found at least on page 9, line 7.

II. Objections

The Office Action objects to the Specification, the Title, Figure 22, and Figure 24. The Specification and the Title are amended herein. Replacement Figure 22 and replacement Figure 23 are also included herein. Applicants submit that these amendments render the objections moot. Withdrawal of the objections is requested.

III. Claim Rejections - 35 U.S.C. § 112

Claims 19-22 and 24 stand rejected under 35 U.S.C. § 112 as allegedly containing subject matter that was not described in the specification in such a way as to reasonably convey possession of the claimed invention. Those claims also stand rejected under 35 U.S.C. § 112 for alleged lack of enablement.

Claim 19 is an independent claim from which claims 20-22 and 24 depend. Claim 19 is amended herein. As amended, claim 19 is directed to an isolated polynucleotide molecule comprising a nucleotide sequence encoding the polypeptide of SEQ ID NO: 19, wherein the

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polynucleotide molecule is integrated into the chromosome of a cell of the genus

Corynebacterium. Applicants submit that the specification sufficiently describes the structure of the claimed invention, and that the specification adequately enables one skilled in the art to make and use the invention. Withdrawal of the rejection and allowance of the claims are earnestly solicited.

Claim 23 stands rejected under 35 U.S.C. § 112, first paragraph, for alleged lack of enablement due to the absence of a deposit of biological material designated NRRL B30360. That strain was deposited according to the Budapest Treaty on October 31, 2000, as set forth in the Amendments to the Specification. The undersigned attests that upon issuance of a patent, NRRL B30360 will be irrevocably released to the public, subject to the limitations of paragraph (b) of 37 C.F.R. § 1.808.

Withdrawal of the rejection and allowance of the claim are requested.

IV. Claim Rejections - 35 U.S.C. §§ 102 and 103

Claims 19-22 stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Pisabarro, *et al.*, "A Cluster of Three Genes (*dapA*, *orf2*, and *dapB*) of *Brevibacterium lactofermentum* Encodes Dihydrodipicolinate Synthase, Dihydrodipicolinate Reductase, and a Third Polypeptide of Unknown Function," *J. Bacteriol.*, 175: 2743-49 (May 1993). Claim 24 stands rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Pisabarro, *et al.*, in view of Serwold-Davis, *et al.*, "Transformation of *Corynebacterium diphtheriae*, *Corynebacterium ulcerans*, *Corynebacterium glutamicum*, and *Escherichia coli* with the *C. diphtheriae* plasmid pNG2," *Proc. Natl. Acad. Sci. USA*, 84: 4964-4968 (1987).

The rejections under 35 U.S.C. §§ 102 and 103(a) cannot stand for any of the claims as amended herein. For a reference to anticipate a claim, the reference must include all of the

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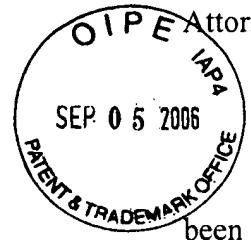
limitations of that claim. For a combination of references to render a claim obvious, the references must teach or suggest all of the limitations of the claim. Neither Pisabarro nor Serwold-Davis includes all of the limitations of the amended claims, because neither Pisabarro nor Serwold-Davis suggests integration of an isolated polynucleotide molecule into the chromosome of a cell of the genus *Corynebacterium*.

The cited references do not teach all of the limitations of the claims. Therefore, the references can not anticipate the claims or render them obvious. The rejections should be withdrawn and the claims allowed.

V. Double Patenting

Claims 19-22 and 24 stand rejected for alleged nonstatutory double patenting in light of claims 11-13 and 48 of U.S. Patent No. 6,927,046. Applicants submit that this rejection is improper, because the current application was filed as a result of a restriction requirement issued in the application that eventually matured into the '046 patent. Pursuant to 35 U.S.C. § 121, the '046 patent may not be used as a reference against the instant application. *See also* M.P.E.P. § 804.01. Withdrawal of the rejection and allowance of the claims is earnestly solicited.

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CONCLUSION

Applicants believe that a full and complete response to the outstanding office action has been made herein. In the event that further discussion might resolve any outstanding issues with the claims, the Examiner is invited to telephone the undersigned at the number provided below. Consideration and early allowance of all of the pending claims is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink that reads "Duane A. Stewart III".

Dated: September 5, 2006

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